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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 2652 BUILDING LLC, a California
12 limited liability company,

13 Plaintiff,

14 vs.

15 SOUTH STATE BANK, N.A., a
16 national banking association, on its
17 own behalf and as successor in
interest to FSB Bank, N.A., a national
banking association,

18 Defendants.
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Case No. **2:23-cv-04625 FLA (JCx)**

Assigned to the Hon. Fernando L.
Aenlle-Rocha
Department: 6B

DISCOVERY MATTER

PROTECTIVE ORDER

Hon. Jacqueline Chooljian

Action Filed: May 10, 2023
Action Removed: June 12, 2023

Scheduling conference: August 18,
2023

PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal. Rather, when the parties seek permission from the court to file material under seal, the parties must comply with Civil Local Rule 79-5 and with any pertinent orders of the assigned District Judge and Magistrate Judge.

B. GOOD CAUSE STATEMENT

In light of the nature of the claims and allegations in this case and the parties' representations that discovery in this case will involve the production of confidential records, and in order to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in connection with this action, to address their handling of such material at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. The parties shall not designate any information/documents as confidential without a good faith belief that such information/documents have been maintained in a confidential, non-public manner, and that there is good cause or a compelling reason why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: The instant action: *2652 Building LLC, etc. v. SouthState Bank, N.A., etc.*; Case No. 2:23-cv-04625 FLA (JC), United States District Court, Central District of California, Western Division.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

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1 2.10 Outside Counsel of Record: attorneys who are not employees of a party
 2 to this Action but are retained to represent or advise a party to this Action and have
 3 appeared in this Action on behalf of that party or are affiliated with a law firm which
 4 has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
 6 employees, consultants, retained experts, and Outside Counsel of Record (and their
 7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
 11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 13 and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
 15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
 17 from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Order cover not only Protected Material (as
 20 defined above), but also (1) any information copied or extracted from Protected
 21 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
 22 and (3) any deposition testimony, conversations, or presentations by Parties or their
 23 Counsel that might reveal Protected Material, other than during a court hearing or at
 24 trial.

25 Any use of Protected Material during a court hearing or at trial shall be
 26 governed by the orders of the presiding judge. This Order does not govern the use of
 27 Protected Material during a court hearing or at trial.

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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under this
13 Order must take care to limit any such designation to specific material that qualifies
14 under the appropriate standards. The Designating Party must designate for protection
15 only those parts of material, documents, items, or oral or written communications that
16 qualify so that other portions of the material, documents, items, or communications
17 for which protection is not warranted are not swept unjustifiably within the ambit of
18 this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating Party
23 to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions), that the Producing Party affix at
7 a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
8 legend”), to each page that contains protected material. If only a portion or portions
9 of the material on a page qualifies for protection, the Producing Party also must clearly
10 identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and before
15 the designation, all of the material made available for inspection shall be deemed
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which documents, or
18 portions thereof, qualify for protection under this Order. Then, before producing the
19 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
20 to each page that contains Protected Material. If only a portion or portions of the
21 material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the
23 margins).

24 (b) for testimony given in depositions that the Designating Party identifies
25 on the record, before the close of the deposition as protected testimony.

26 (c) for information produced in some form other than documentary and for
27 any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 2 protection, the Producing Party, to the extent practicable, shall identify the protected
 3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 5 failure to designate qualified information or items does not, standing alone, waive the
 6 Designating Party’s right to secure protection under this Order for such material.
 7 Upon timely correction of a designation, the Receiving Party must make reasonable
 8 efforts to assure that the material is treated in accordance with the provisions of this
 9 Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 12 designation of confidentiality at any time that is consistent with the Court’s
 13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 15 resolution process under Local Rule 37-1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on
 17 the Designating Party. Frivolous challenges, and those made for an improper purpose
 18 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 19 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 20 or withdrawn the confidentiality designation, all parties shall continue to afford the
 21 material in question the level of protection to which it is entitled under the Producing
 22 Party’s designation until the Court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 25 disclosed or produced by another Party or by a Non-Party in connection with this
 26 Action only for prosecuting, defending, or attempting to settle this Action. Such
 27 Protected Material may be disclosed only to the categories of persons and under the

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1 conditions described in this Order. When the Action has been terminated, a Receiving
2 Party must comply with the provisions of Section 13 below.

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary
12 to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
27 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
28 form attached as Exhibit A hereto; and (2) they will not be permitted to keep any

1 confidential information unless they sign the “Acknowledgment and Agreement to
 2 Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party
 3 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
 4 depositions that reveal Protected Material may be separately bound by the court
 5 reporter and may not be disclosed to anyone except as permitted under this Protective
 6 Order; and

7 (i) any mediator or settlement officer, and their supporting personnel,
 8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 10 OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation
 12 that compels disclosure of any information or items designated in this Action as
 13 “CONFIDENTIAL,” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall
 15 include a copy of the subpoena or court order unless prohibited by law;

16 (b) promptly notify in writing the party who caused the subpoena or order
 17 to issue in the other litigation that some or all of the material covered by the subpoena
 18 or order is subject to this Protective Order. Such notification shall include a copy of
 19 this Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
 21 by the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served with
 23 the subpoena or court order shall not produce any information designated in this action
 24 as “CONFIDENTIAL” before a determination by the court from which the subpoena
 25 or order issued, unless the Party has obtained the Designating Party’s permission, or
 26 unless otherwise required by the law or court order. The Designating Party shall bear
 27 the burden and expense of seeking protection in that court of its confidential material

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1 and nothing in these provisions should be construed as authorizing or encouraging a
2 Receiving Party in this Action to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
7 produced by Non-Parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party's confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party's
13 confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party
15 that some or all of the information requested is subject to a confidentiality agreement
16 with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Protective Order
18 in this Action, the relevant discovery request(s), and a reasonably specific description
19 of the information requested; and

20 (3) make the information requested available for inspection by the Non-
21 Party, if requested.

22 (c) If a Non-Party represented by counsel fails to commence the process
23 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice
24 and accompanying information or fails contemporaneously to notify the Receiving
25 Party that it has done so, the Receiving Party may produce the Non-Party's
26 confidential information responsive to the discovery request. If an unrepresented
27 Non-Party fails to seek a protective order from this court within 14 days of receiving
28 the notice and accompanying information, the Receiving Party may produce the Non-

1 Party's confidential information responsive to the discovery request. If the Non-Party
2 timely seeks a protective order, the Receiving Party shall not produce any information
3 in its possession or control that is subject to the confidentiality agreement with the
4 Non-Party before a determination by the court unless otherwise required by the law
5 or court order. Absent a court order to the contrary, the Non-Party shall bear the
6 burden and expense of seeking protection in this court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this
10 Protective Order, the Receiving Party must immediately (a) notify in writing the
11 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
12 all unauthorized copies of the Protected Material, (c) inform the person or persons to
13 whom unauthorized disclosures were made of all the terms of this Order, and (d)
14 request such person or persons to execute the "Acknowledgment and Agreement to
15 Be Bound" that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection,
20 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
22 may be established in an e-discovery order that provides for production without prior
23 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
24 parties reach an agreement on the effect of disclosure of a communication or
25 information covered by the attorney-client privilege or work product protection, the
26 parties may incorporate their agreement into this Protective Order.

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1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
5 would have to object to disclosing or producing any information or item on any
6 ground not addressed in this Protective Order. Similarly, no Party waives any right
7 to object on any ground to use in evidence of any of the material covered by this
8 Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
11 orders of the assigned District Judge and Magistrate Judge. If a Party's request to file
12 Protected Material under seal is denied by the court, then the Receiving Party may
13 file the information in the public record unless otherwise instructed by the court.

14 13. FINAL DISPOSITION

15 After the final disposition of this Action, as defined in Section 4, within 60 days
16 of a written request by the Designating Party, each Receiving Party must return all
17 Protected Material to the Producing Party or destroy such material. As used in this
18 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
19 summaries, and any other format reproducing or capturing any of the Protected
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
21 must submit a written certification to the Producing Party (and, if not the same person
22 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
23 category, where appropriate) all the Protected Material that was returned or destroyed
24 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
25 compilations, summaries or any other format reproducing or capturing any of the
26 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing
28 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, BY AND THROUGH COUNSEL OF RECORD,

Dated: August 4, 2023

DAVIS WRIGHT TREMAINE, LLP

/s/ Yonaton M. Rosenzweig

Yonaton M. Rosenzweig

Drew E. Anderson

Counsel for Plaintiff, 2652 Building LLC

Dated: August 4, 2023

AKERMAN LLP

/s/ Michael R. Weiss

Michael R. Weiss

Christian P. George (pro hac vice)

Counsel for Defendant, South State Bank, N.A.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: August 10, 2023

/s/

HON. JACQUELINE CHOOLJIAN

United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the Protective Order that was issued by the
 United States District Court for the Central District of California on August 10, 2023
 in the case of 2652 Building LLC, etc. v. SouthState Bank, N.A., etc.; Case No. 2:23-
 cv-04625 FLA (JC), United States District Court, Central District of California,
 Western Division. I agree to comply with and to be bound by all the terms of this
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____